IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1908 OF 2003
IN
SUIT NO.1619 OF 1996

Hamco Mining and Smelting Ltd. ..Plaintiffs

Vs.

Praveen D.Desai and Ors. ..Defendants

And

Dr.Shwetank Jain and Anr. ..Applicants

WITH

NOTICE OF MOTION NO.2095 OF 2003
WITH
NOTICE OF MOTION NO.2096 OF 2003
IN
SUIT NO.1619 OF 1996

Hamco Mining and Smelting Ltd. ..Plaintiffs

Vs.

Uday Wagele and Ors. ..Defendants

And

Dr.Shwetank Jain and Anr. ..Applicants

Mr.Pankaj Shah for the Applicants

CORAM : S.U.KAMDAR, J
DATED : 26TH OCTOBER, 2005

P.C.:

1. The learned counsel for the plaintiffs has pointed out that suit is dismissed by the Prothonotary and Senior Master, High Court, Mumbai by order dt.10.10.02. Motion No.1908 of 2003 has been initiated by the defendant no.2 and 3 for restoration of the suit and other reliefs such as for appointment of Receiver. In my view the ground on behalf of defendant no.2 and 3 to restore the suit which is dismissed for non-prosecution by the Prothonotary and Senior Master is not maintainable and accordingly the said motion is dismissed.

2. In so far as motion no.2095 of 2003 is concerned, the said motion has been initiated again by defendant no.2 and 3 for directing respondent no.1 to produce in court the documents and for impounding thereof. In view of dismissal of suit itself, the said motion does not survive. Motion is accordingly dismissed.

3. The third motion being motion no.2096 of 2003 is taken out by defendant no.2 and 3 is for production of documents and to take possession thereof. This motion is also does not survive in

view of disposal of suit itself. In that view of the matter, this motion is also dismissed. However, it is clarified that defendant no.2 and 3 will be at liberty to adopt appropriate legal proceedings to establish their own rights if any and dismissing of the motion will not preclude them for filing proceedings for substantial relief.

4. All the motions are accordingly dismissed. No order as to costs.